

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

Richard Babington)

Montgomery, Montgomery County, Alabama)

ADMINISTRATIVE

ORDER NO: 19-____-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

1. Richard Babington (hereinafter, “Babington”) owns approximately sixty-one acres of property located next to Eastwood Villa Subdivision in Montgomery County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer

and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that "...open burning must take place on the property on which the combustible fuel originates."

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that "Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash."

6. ADEM Admin. Code r. 335-3-3-.01(2)(d) states that "Permission to open burn under the provision of this paragraph is revoked during the months of May, June, July, August, September, and October in Baldwin, DeKalb, Etowah, Jefferson, Lawrence, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, and Talladega Counties.

7. On November 15, 2017, the Department received a complaint of unauthorized open burning being conducted on property owned by Babington located at the end of Park Lane, adjacent to the Eastwood Villas subdivision (32.372941, -86.050384) in Montgomery, Montgomery County, Alabama. (hereinafter, the "Site"). Babington admitted that he allows truckloads of vegetation from various individuals and businesses that operate in and around Montgomery to be dumped on his property. According to the complainant the burning was observed on October 31, 2017 and November 14, 2017.

8. On November 15, 2017, Department personnel conducted a complaint investigation of the Site and observed unauthorized open burning of imported vegetation and other various refuse in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

9. On November 20, 2018, Babington along with his attorney, Hon. H. Dean Mooty, meet with Department personnel and denied setting the fires but acknowledge the fires were on his property. In addition, he presented a plan as set forth in correspondence dated December 10, 2018 to secure the area and install fire suppression measures at the Site. Due to the associated cost, the Department has agreed to reduce the penalty herein. Babington shall complete these measures by March 15, 2019. Furthermore, Babington shall notify and allow Department personnel to inspect the work upon completion. Babington shall furnish copies of all invoices associated with the work to the Department by March 22, 2019.

10. The Department has agreed to reduce the penalty herein because of the cost of implementation of the plan described above. In the event the planned measures are not completed as set forth above, the reduction shall be eliminated and the original penalty reinstated.

11. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day

such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Babington allowed and/ or conducted illegal open burning of imported vegetation and refuse at the Site. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Babington to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Babington likely derived economic benefit by allowing materials to be disposed of on his property.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Babington to mitigate possible effects of these violations upon the environment. However, Babington has offered to implement a plan as set forth in correspondence dated December 10, 2018 to secure the area and install fire suppression measures at the Site.

E. HISTORY OF PREVIOUS VIOLATIONS: On November 1, 2011, the Department received a complaint of open burning being conducted at the Site. On November 23, 2011, the Department issued a Warning Letter to the property owner. The response indicated that Babington was responsible for the open burning. The Department contacted Babington and requested that the open burning of vegetation cease immediately. Babington responded that he was not the one responsible for setting the fires. On November 6, 2012, the Department received another complaint stating that the open burning had resumed at the Site. On May 24, 2013, the Department issued a Warning

Letter to Babington regarding the unauthorized open burning. On November 13, 2013 open burning was observed at the Site. On November 21, 2013 and November 25, 2013, unauthorized open burning was observed at the Site. On December 7, 2013, the Department received another complaint regarding open burning at the Site. On May 29, 2014, The Department issued a Notice of Violation (NOV) to Babington for conducting and/or allowing open burning to take place on his property. On December 29, 2014, the Department conducted a complaint investigation of the Site and observed several piles of burning debris on the property. On May 8, 2015, Department personnel conducted a follow up inspection of Babington's property and noted continued burning of limb debris and trash during the Burn Ban. On June 5, 2015, the Department issued Babington a second NOV referencing the June 23, 2014 response to the May 29, 2014 NOV and the unauthorized open burning observed on May 8, 2015. The Department never received the requested response to the June 5, 2015 NOV. On January 20, 2016, the Department received a complaint regarding continued open burning at the Site. The Department performed a site visit on January 20, 2016 and witnessed burning of limbs and debris on Babington's property.

F. THE ABILITY TO PAY: Babington has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (*See* "Attachment A", which is hereby incorporated into these Findings).

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Babington shall pay to the Department a civil penalty in the amount of \$1,500.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environment Management by certified or cashier's check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, Babington shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)4, and 335-3-3-.01(2)(d).

C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve Babington of his obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Babington for the violations cited herein.

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Babington for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2019.

Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

ATTACHMENT A

**Richard Babington
Montgomery, Montgomery County**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	1	\$2,000	\$2,000	\$1,500	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$2,000</i>	<i>\$2,000</i>	<i>\$1,500</i>	<i>\$5,500</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	5,000.00
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$6,500.00
Total Adjustments (+/-)	\$5,000.00
FINAL PENALTY	\$1,500.00

Footnotes

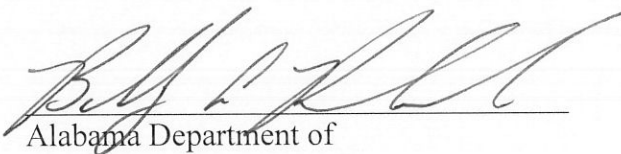
* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.

CERTIFICATE OF SERVICE

I, Bobby Rowland, do hereby certify that I have served this
Administrative Order upon the person(s) listed below.

Richard Babington
67 Waters View Drive
Pike Road, Alabama 36064

DONE this the 24th day of July, 2018.


Alabama Department of
Environmental Management